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# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/823,050
Filing Date	March 29, 2001
First Named Inventor	George R. Borden, IV
Art Unit	2622
Examiner Name	Luong T. Nguyen
Total Number of Pages in This Submission	16
Attorney Docket Number	7146.0073

## ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, <u>Brief</u> , Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return postcard Check for \$500
<b>Remarks</b>  The Commissioner is hereby authorized to charge any additional fees, or credit any overpayment, to Deposit Account No. 03-1550.		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm	Chernoff, Vilhauer, McClung & Stenzel 601 SW Second Ave., Suite 1600 Portland, OR 97204		
Signature			
Printed Name	Kurt A. Rohlfs		
Date	May 7, 2007	Reg. No.	54,405

## CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Signature			
Typed or printed name	Kurt A. Rohlfs	Date	May 7, 2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Effective on 12/08/2004.  
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

## FEE TRANSMITTAL for FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500

### Complete if Known

Application Number	09/823,050
Filing Date	March 29, 2001
First Named Inventor	George Borden
Examiner Name	Luong T. Nguyen
Art Unit	2622
Attorney Docket No.	7146.0073

### METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify) : \_\_\_\_\_

☒ Deposit Account Deposit Account Number: 03-1550 Deposit Account Name: Chernoff, Vilhauer, McClung & Stenzel

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☐ Charge fee(s) indicated below, except for the filing fee

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Under 37 CFR 1.16 and 1.17

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### FEE CALCULATION

#### 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

#### 2. EXCESS CLAIM FEES

##### Fee Description

Each claim over 20 (including Reissues)

Fee (\$)

50

Each independent claim over 3 (including Reissues)

200

Multiple dependent claims

360

Total Claims

Extra Claims

Fee(\$)

Fee Paid (\$)

Multiple Dependent Claims

Fee (\$)

Fee Paid (\$)

\_\_\_\_\_ -20 or HP= \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims

Extra Claims

Fee(\$)

Fee Paid (\$)

\_\_\_\_\_ - 3 or HP= \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3.

#### 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____	_____	_____ / 50 = _____ (round up to a whole number) x _____	_____	_____

#### 4. OTHER FEE(S)

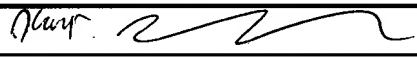
Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief

Fees Paid (\$)

\$500

### SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	54,405	Telephone	503-227-5631
Name (Print/Type)	Kurt Rohlf	Date	5-7-2007		

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: George R. Borden, IV                      Group Art Unit: 2622  
Serial No.: 09/823,050                      Examiner: Nguyen, Luong T.  
Filed: March 29, 2001                      Customer No.: 55648  
Title: CALENDAR-BASED PHOTO BROWSER

**APPELLANT'S BRIEF**

Chernoff, Vilhauer, McClung, and Stenzel, L.L.P.  
1600 ODS Tower  
601 SW Second Avenue  
Portland, Oregon 97204

May 7, 2007

Mail Stop APPEAL BRIEF-PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**BACKGROUND**

This brief is in furtherance of the Notice of Appeal, filed in this case on March 5, 2007.

The fees required under 37. C.F.R. § 41.20(b)(2), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief comprises these subjects under the headings, and in the order, set forth below:

05/11/2007 CNEGA1 00000051 09823050  
01 FC:1402 500.00 OP

- I. Real Party in Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds for Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Conclusion
- IX. Claims Appendix
- X. Evidence Appendix
- XI. Related Proceedings Appendix

The final page of this brief bears the practitioner's signature.

### **REAL PARTY IN INTEREST**

The real party in interest in this appeal is Sharp Laboratories of America, Inc., assignee of the captioned application.

### **RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

## **STATUS OF CLAIMS**

### **A. TOTAL NUMBER OF CLAIMS IN THE APPLICATION**

There are 19 claims currently pending in the application.

### **B. STATUS OF ALL CLAIMS**

Claims canceled: 1-32

Claims withdrawn: None

Claims pending: 33-44 and 46-52

Claims allowed: None

Claims objected to: 33, 34-42

Claims rejected: 33-44 and 46-52

### **C. CLAIMS ON APPEAL**

Claims 33-44 and 46-52 are on appeal.

A copy of the claims on appeal is set forth in the Claims Appendix to this Brief.

## **STATUS OF AMENDMENTS**

No amendment was filed after final rejection.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

The claimed subject matter is most broadly set forth in two independent claims. Independent claim 33 is generally directed to a calendar-based photo file browsing system for browsing a plurality of files, at least one of which is either a digital image file or a digital video file. *See, e.g.* FIG. 1 elements 60 and Specification at p. 7 line 4 and p. 8 lines 14-16. Each digital file has an associated date. See Specification at p. 3 line 16 to p. 4 line 9. Furthermore, the

system has an interface displayed on a display. See Fig. 1, element 12 and Specification at p. 4 lines 12-13. The interface includes two claimed features. First, the interface includes a calendar portion having a range of displayed dates, each respective date containing an indicator indicating the existence of one or more files associated with the respective date. *See* FIGS 1-5, element 10 and Specification at p. 5 lines 8-12. Second, the interface includes a browsing portion enabling a user to selectively increment the range by a month and alternatively enabling a user to selectively increment the range by a portion of a month. *See* FIGS 1-5, element 28 and Specification at p. 5 lines 20-23.

Independent claim 43 is generally directed to a calendar-based photo file browsing system for browsing a plurality of files, at least one of which is a digital image or a digital video file. *See, e.g.* FIG. 1 elements 60 and Specification at p. 7 line 4 and p. 8 lines 14-16. Each digital file has an associated date. *See* Specification at p. 3 line 16 to p. 4 line 9. Furthermore, the system has an interface displayed on a display. See Fig. 1, element 12 and Specification at p. 4 lines 12-13. The interface includes two claimed features. First, the interface includes a calendar portion having a range of displayed dates, each respective date containing an indicator indicating the existence of one or more files associated with the respective date, the indicator being a thumbnail image of a file associated with the respective date. *See* FIG 1, elements 10 and 22, and Specification at p. 5 lines 8-19. Second, the interface includes a browsing portion enabling a user to selectively increment the range by a month and alternatively enabling a user to selectively increment the range by a portion of a month. *See* FIGS 1-5, element 28 and Specification at p. 5 lines 20-23.

## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The grounds of rejection presented for review are (1) whether claims 33-38, 40-44, 46-48, and 50-52 are unpatentable under 35 U.S.C. §103(a) over Suzuki et al., U.S. Pat. No. 6,590,585 (hereinafter Suzuki), in view of Phillips et al., U.S. Pat. No. 6,186,553 (hereinafter Phillips); and (2) whether claims 39 and 49 are unpatentable under 35 U.S.C. §103(a) over the aforementioned combination of Suzuki and Phillips, and in further view of Peairs et al., U.S. Patent No. 6,085,205 (hereinafter Peairs).

## **ARGUMENT**

### **1. Rejection of claims 33-38, 40-44, 46-48, and 52-50**

The Examiner rejected claims 33-38, 40-44, 46-48, and 50-52 under 35 U.S.C. § 103(a) as being obvious in view of the combination of Suzuki and Phillips. To establish a *prima facie* case of obviousness, an Examiner is obligated to show that the prior art combination teaches all claimed elements. *See* MPEP § 2143. Each of independent claims 33 and 43, from which the remaining claims respectively depend, includes the limitation of “a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment the range by a portion of a month.” This limitation is not disclosed by either cited reference, hence the Examiner has failed to state a *prima facie* case of obviousness.

The Examiner erroneously contends that Phillips discloses the above-quoted limitation at col. 8 lines 1-5. Phillips merely discloses calendar generation software for creating a calendar displaying a *fixed* date range. *See* Phillips at FIGS 3-5 and col. 2 lines 1-6 and 18-21. Phillips indicates, in the portions cited by the Examiner, that the generation procedure is flexible enough to “auto-select date ranges” based on programmed “knowledge of Gregorian and Julian (and

other) calendars for all relevant years. . . . The selected date range allowed by the calendar creation software could be virtually any size (e.g., 2-100 days) and could span month or year boundaries as desired.” *See Id.* at col. 7 line 61 to col. 8 line 4. Any calendar generated using the method of Phillips, however, has a date range that cannot be incremented *at all*, let alone by a user-selected one of a month or a portion of a month. The Examiner is apparently conflating a prior art disclosure of a user-selected *size* of a range of displayed dates, with the claimed step of allowing a user to select the *interval* by which the range, whatever its size, is *incremented*. Phillips discloses the former, not the latter.

Nor does the primary reference, Suzuki, disclose the limitation of “a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment the range by a portion of a month.” Instead, that reference requires a user to increment the displayed range by one or more *whole* months, i.e. the user is not able to select an interval, by which the displayed range is *incremented*, of less than a month. Thus each of independent claims 22 and 43, as well as their respective dependent claims 34-38, 40-42, 44, 46-48, and 50-52, is patentably distinguished over the cited prior art.

## **2. Rejection of claims 39 and 49.**

Each of claims 39 and 49 depends from a respective one of independent claims 33 and 43. The Examiner’s rejection of claims 39 and 49 relies upon the erroneous contention, previously discussed, that Phillips discloses the limitation of “a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment the range by a portion of a month.” *See* Office Action at p. 7, item 5. Therefore, the



Examiner's rejection of claims 39 and 39 is also improper, for the same reasons as is the rejection of claims 33 and 43.

For the foregoing reasons, independent claims 33 and 43, as well as their respective dependent claims 34-44 and 46-52 each patentably distinguish over the cited prior art, and the Examiner's rejection of these claims under 35 U.S.C. § 103(a) should be reversed.

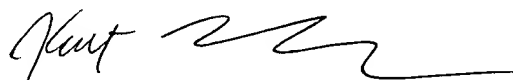
### **3. Claim Objections.**

The Examiner comments that claim 33, line 10 should be changed to recite "said user" rather than "a user." The applicant agrees to make this correction following this appeal.

### **CONCLUSION**

The Examiner's respective rejections of claims 33-44 and 46-52 should be reversed, and the claims should be found patentable.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kurt", followed by a long, horizontal, wavy line that extends to the right.

Kurt Rohlf  
Reg. No. 54,405  
Attorney for Applicant  
Telephone: (503) 227-5631

## **CLAIMS APPENDIX**

1-32 (Canceled).

33. A calendar-based photo file browsing system for browsing a plurality of files including at least one of a digital image or a digital video, each said digital file having an associated date, said system having an interface displayed on a display, said interface comprising:

(a) a calendar portion having a range of displayed dates, each respective said date containing an indicator indicating the existence of one or more files associated with said respective said date; and

(b) a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment said range by a portion of a month.

34. The system of claim 33 where said browsing portion permits said user to selectively increment said range by a selected one of a day, a month, and a year.

35. The system of claim 33 where said browsing portion permits said user to adjust the size of said range by a number of days equal to or greater than a week.

36. The system of claim 35 where said browsing portion permits said user to alternate said range between a week and a month.

37. The system of claim 33 where said indicator is a thumbnail image.
38. The system of claim 37 where said thumbnail image is representative of a plurality of images, each associated with the respective indicator's date.
39. The system of claim 33 where each respective displayed date has an associated displayed second indicator indicating the quantity of files associated with said respective displayed date.
40. The system of claim 33 having plural said indicators.
41. The system of claim 40 where each of said plural indicators of a respective said date indicates a category of files.
42. The system of claim 40 where each of said plural indicators of a respective date indicates a time associated with said respective date relative to other said indicators associated with said respective date.
43. A calendar-based photo file browsing system for browsing a plurality of files including at least one of a digital image or a digital video, each said digital file having an associated date, said system having an interface displayed on a display, said interface comprising:

(a) a calendar portion having a range of displayed dates, each respective said date containing an indicator indicating the existence of one or more files associated with said respective said date, said indicator being a thumbnail image of a file associated with said respective said date; and

(b) a browsing portion enabling a user to selectively increment said range alternatively either by a month or a portion of a month.

44. The system of claim 43 where said thumbnail image is representative of a plurality of images, each associated with the respective indicator's date.

45 (canceled).

46. The system of claim 43 where said browsing portion permits a said user to adjust the size of said range by a number of days equal to or greater than a week.

47. The system of claim 46 where said browsing portion permits a said user to alternate said range between a week and a month.

48. The system of claim 43 where said browsing portion permits a said user to selectively increment said range by a selected one of a day, a month, and a year.

49. The system of claim 43 where each respective displayed date has an associated displayed second indicator indicating the quantity of files associated with said respective displayed date.

50. The system of claim 43 having plural said indicators.

51. The system of claim 50 where each of said plural indicators of a respective said date indicates a category of files.

52. The system of claim 50 where each of said plural indicators of a respective date indicates a time associated with said respective date relative to other said indicators associated with said respective date.

**EVIDENCE APPENDIX:**

None.

**RELATED PROCEEDINGS APPENDIX:**

None.